

High-Priority Tools for Public Health Emergency Legal Preparedness

“Social Distancing Law Assessment”

Denise Chrysler, J.D.
Public Health Legal Director
Michigan Department of Community Health

NACCHO Annual Conference
Memphis, TN
July 14, 2010



Overview

- Legal Preparedness
- Social Distancing Law Project
- Michigan's Implementation
- Implementation by Local Health Departments

The Social Distancing Law Project

- A self-assessment of legal preparedness to implement social distancing measures in both declared and undeclared public health emergencies
- Sponsored by CDC/directed by ASTHO

Oh No! Not “legal”!



We'll never get anything done if the lawyers are involved

Legal Basis for Social Distancing Measures

- Significant gains in legal preparedness
- However, the use of legally-enforced community wide measures have not been widely practiced in the US since the first half of the 20th century
- Jurisdictions must have sufficient legal authority
- Address the challenges of balancing individual rights with the need to protect public health

Responding to Homeland Security Council Needs

- National Strategy for Pandemic Influenza (2005)
- National Strategy for Pandemic Influenza Implementation Plan (2006)
 - Acknowledges the important role of social distancing
 - Need for governments at all levels to assess legal capacity to respond to pandemic
- SDLP developed to address action items assigned to CDC

The Social Distancing Law Project (SDLP)

- Goals
 - Characterize the status of effective legal authorities
 - Address the competencies of public health professionals to apply those laws
 - Cross-sector and jurisdiction coordination
 - Share “Best Practices” in the use law-based measures

Participating jurisdictions

- SDLP Round 1 (2007)
 - 17 jurisdictions that host or border jurisdictions with CDC quarantine stations
 - Stipends provided
- SDLP Round 2 (2009/2010)
 - 40 ASTHO jurisdictions not in round 1 invited to participate
 - 10 awards of 25,000 granted
 - 9 jurisdictions participated

Participating jurisdictions

- SDLP Round 1 (2007)

- Alaska
- California
- Connecticut
- DC
- Florida
- Georgia
- Hawaii
- Illinois
- Maryland
- Massachusetts
- Michigan
- New Jersey
- New York
- Puerto Rico
- Texas
- Virginia
- Washington

Participating jurisdictions

- SDLP Round 2 (2009/2010)

- Alabama
- Missouri
- Nebraska
- New Hampshire
- North Dakota
- Ohio
- Oregon
- Pennsylvania
- Utah

Methods

- Legal Assessment
 - Assessing sufficiency
 - Identifying gaps
- Legal Consultation Meetings
 - Review legal assessment results using a table top exercise
 - Broad-based participation
- Reports
 - Formal written assessment w/authorities
 - Final after action report

Legal Assessment Instrument – Round 1

- I. Restrictions on the movement of persons (e.g. group & area quarantine)
- II. Curfew authority
- III. Inter-jurisdictional cooperation in restricting movement of persons
- IV. Closure of public places
- V. Mass prophylaxis legal readiness (eg, blanket prescription orders, distribution of countermeasures)
- VI. Other considerations particular to jurisdiction

Considerations

- Questions considered during and absent declared emergencies
- Establishing and ordering measures
- Enforcement and penalties
- Duration of measures: ending and renewing
- Due process and potential liabilities
- Potential legal barriers
- Potential gaps or uncertainties

Legal Assessment – Round 2

- Legal assessment streamlined to focus solely on social distancing measures (e.g., not mass prophylaxis) and those directly related to public health (e.g., not curfew, more of a public safety/law & order issue)
- Emphasis on addressing challenges that arose during the Influenza A H1N1 response
- Discussions among project leads of lessons learned and themes

Legal Assessment – Round 2

- Assessment topics:
 - I. Restriction on the Movement of Persons
 - II. Inter-jurisdictional Cooperation and Restricting Movement of Persons
 - III. Closure of Public Places
 - IV. Dismissal of Schools
 - V. Cancellation of Mass Gatherings [New!]

Findings

- Sufficient legal authority to implement social distancing
- Unique concerns for each jurisdiction (eg, administrative review process)
- Further work needed:
 - Coordination among agencies; cross jurisdictional issues
 - Enforcement
 - Liability
 - Business continuity planning
 - Coordination across sectors



Department of
Community Health

Michigan's Implementation Social Distancing Law Project

Establishing our project team

- Goal: Small enough to efficiently carry out its charge; large enough to include individuals with needed expertise
 - Public Health: epidemiology, surveillance, emergency management, medicine, legal
 - Local public health
 - Attorney General's office
 - CDC Detroit Quarantine Station, Officer in Charge
 - Support staff
- During an emergency, who will provide legal support?

Conducting our assessment

- Drawing on prior work and analyses
- Dividing up work
- Identifying laws, policies, procedures
- Creating your own resource book for public health emergencies
- Starting with the conclusion



Starting with the conclusion

“Michigan law provides broad and flexible authority to protect the public’s health through social distancing measures”

- General powers
- Specific powers
- Police powers
- Rules of construction
- Agency interpretations

Writing our report

- Using other jurisdiction's assessments as models
- Writing for wide distribution
- Characterizing [alleged] weaknesses/gaps
- Obtaining input from others
- Resolving disputes among attorneys
- Creating tables and tools
- Having one person responsible for final product

Planning our legal consultation meeting



McNamara International Terminal
Detroit Metropolitan Airport

Planning our legal consultation meeting

- Where to hold it
- Who to invite
- The importance of the “welcome”
- What to provide to participants
 - Ahead of time
 - At the LCM
- Importance of tools
- Using a facilitator

Conducting our legal consultation meeting

- Quarantine station tours
- Presentations
 - Authority of Health Officers to Prevent & Control the Spread of Disease
 - A Survey of Michigan Emergency Management Laws During a Health Crisis
 - Surveillance & Response to Imported Infectious Disease
- Summary of Points of Law
- Tabletop exercise

Conducting our tabletop exercise

- Tables, leaders, assignments
- Fine-tuning the Scenario
- 3 Segments:
 - Responding to increase in influenza-like illnesses seen by metropolitan hospitals
 - Responding to impending arrival of two airlines with symptomatic passengers
 - Responding to upcoming private and public gatherings
- Question set for each segment
- Facilitated group discussion
- Lessons learned with discussion, review & closing remarks
- Evaluation
- Evaluators

Question Set #1

1. What types of actions may be considered in response to an increase in ILI reported from Michigan hospitals in a metropolitan area?
2. Who takes these actions?
3. What is the legal authority to support these actions?
4. What (which) agencies will supply the resources necessary to take these actions?
5. Are there procedural requirements, limitations, or conditions on taking these actions?

Question Set #2

As a result of a notification that two airliners will be landing at Detroit Metro Airport within 2 hours and that each carries passengers from an area with documented cases of pandemic influenza who are symptomatic of the illness themselves:

1. Describe what actions, if any, should be taken in response to the captains' reports?
2. Who makes this decision?
3. Who implements the decision?
4. What is the legal authority to support these actions?
5. What (which) agencies will supply the resources necessary to take these actions?
6. Are there procedural requirements, limitations, or conditions on implementing these actions?

Question Set #3

1. Describe threats or dangers to Michigan's residents, if any, that each event presents.
2. What responses/measures might be used to mitigate the potential danger or threat? (List each response or measure, include "do nothing" as one of the options)
3. For each response/ measure:

See next slide for additional questions to address

Question Set #3, cont.

- a. What is the legal authority for the response or measure?
- b. Who has the legal authority to take the response or measure?
- c. Who/how are decisions made when there is more than one governmental body or official with authority (i.e. concurrent jurisdiction)? “Who” is responsible for “what”?
- d. How would the response or measure be implemented?
- e. Are there procedural requirements, limitations, or conditions on implementing this response or measure? If so, describe.
- f. How would the response or measure be enforced?
- g. What are the pros for this response or measure (political, economic, health or other)?
- h. What are the cons for this response or measure (political, economic, health or other)?
- i. What do you recommend to the Governor?

Conclusion: Sufficiency of authority is not the issue; implementation is

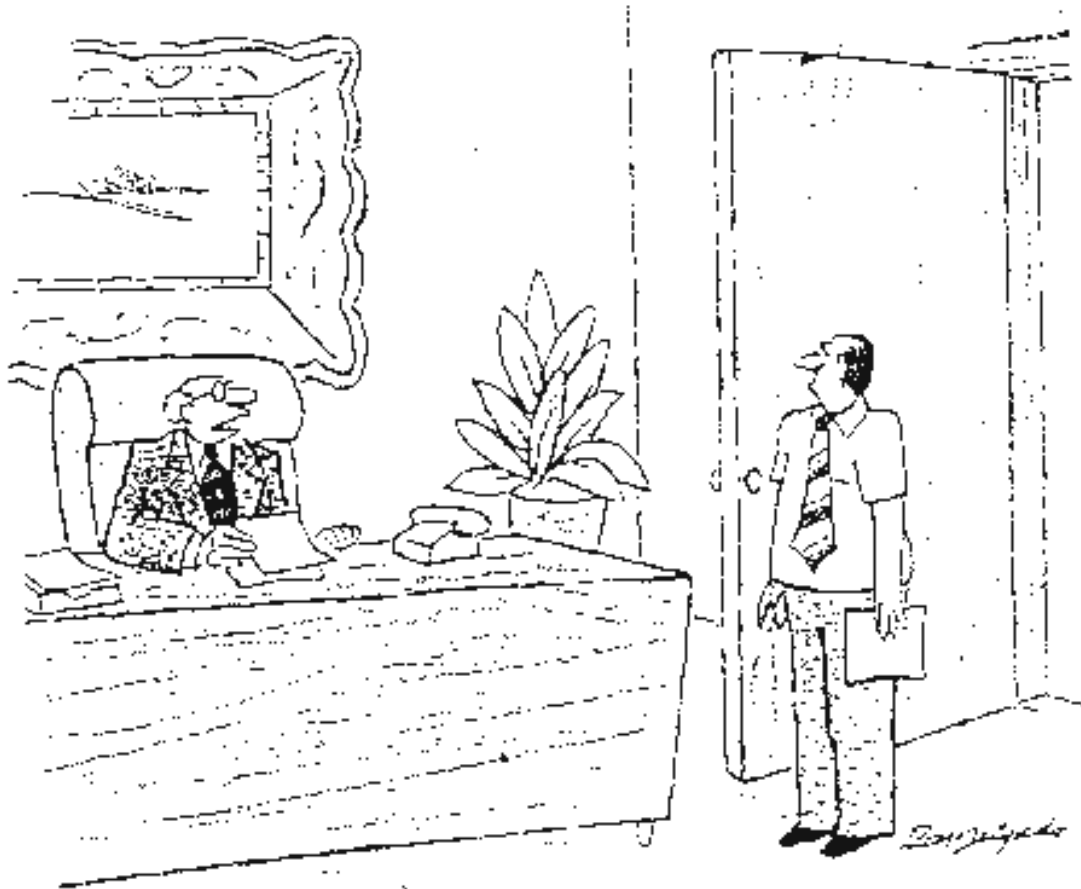
- Logistics
- Personal protection equipment
- Multi-jurisdictional issues - Who's in charge when multiple agencies have authority to act?
- Unaccompanied minors
- Federal hand-off to local government of individuals for quarantine
- Assessing risk (rapid response vs. caution)
- Disproportional impact of measures on certain populations
- Politics
- \$\$\$\$\$ Who supplies resources necessary to take action?

Decisions and Recommendations



... If only they were this easy

Resources?



“You have done so much with so little for so long that I’d like you to move on to doing everything with nothing.”

Following-up

- Developing our after-action report
- Filing report with Homeland Security
- Determining priorities
- Identifying next steps
- Identifying responsible staff, existing committees or workgroups
- Setting timelines/deadlines
- Following up; Re-assessing

Michigan's Action Items

- Violation local health officer's orders
- Due process
- Health officer authority re universities
- Further education / training
- Pan Flu Response Plan: address mass transit
- Unaccompanied minors

SDLP & Local Health Departments

- If your state has not participated, promote participation by state in partnership with local public health
- If your state has participated, expand project to promote local legal readiness
- Local health departments modify project template and activities to assess local gaps and improve legal readiness



Department of
Community Health

Thank you for listening

Denise Chrysler, J.D.
Public Health Legal Director
(517) 373-2109
chryslerd@michigan.gov